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No. 01-253

Supreme Court, U.S.
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In The

Supreme Court of the United States

MAGUS D. ORR, and ANDRE L. SMITH,

Petitioners,

v.

STATE OF OHIO,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Ohio

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Does a temporary police checkpoint, set up to conduct indiscriminate stops of motor vehicles in order to inspect whether the driver has a valid driver's license, violate the Fourth Amendment to the United States Constitution?

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STATEMENT OF THE CASE

In June 1998, the City of Dayton, Ohio, through the Dayton Police Department, operated several driver's license checkpoints. The sole purpose of the checkpoints was to identify and remove unlicensed drivers from the road.

Before the checkpoints were implemented, the Dayton Police Department conducted research, which concluded that approximately 30% of the traffic citations issued in Dayton were for drivers license violations. Dayton Police also estimated that approximately 1 in 8 drivers in Dayton either do not have a drivers license or their license had been suspended. This statistical data was included in the *Dayton Police Drivers License Checkpoint Guidelines,* which was admitted into evidence in the trial court.

The checkpoint operations were located throughout the entire City of Dayton, Ohio. The locations were chosen based on traffic violations. The data accumulated prior to the driver's license checkpoint operations provided Dayton Police a reasonable basis to believe that a problem exists, and that the checkpoint was an effective means of addressing the problem.

The checkpoint operations left police officers no discretion in deciding to stop a vehicle. Vehicles were stopped according to a prearranged pattern, depending on the time of day and level of traffic. At least two warning signs were positioned as cars approached the checkpoint. The first sign was approximately 100 yards from the checkpoint. The signs were reflective and read "Driver's License Checkpoint Ahead." The purpose of the

signs was to alert drivers and reduce confusion. The checkpoints were manned with between nine and thirteen uniformed officers and marked patrol cars. When a vehicle was stopped, an officer asked for a driver's license. While the driver was retrieving the license, the officer would explain the purpose of the checkpoint. The officers only checked to see if the driver had a valid license with them. This process took approximately 45 seconds. If the driver had a valid license, they were given a pamphlet and drove away. If the driver did not have their license on them, or if the license appeared expired, a license verification check was conducted by computer. The computer license verification check took approximately two minutes. If a license violation was found, citations were issued. Issuing citations to unlicensed or suspected unlicensed drivers took approximately ten minutes. Of the 2,110 cars stopped, 224 citations were issued and 159 persons arrested. The checkpoint operations resulted in an arrest rate of over 7.5%.

As a result of the citations issued to petitioners, Magus Orr and Andre L. Smith, each filed a Motion to Suppress. Each alleged that the driver's license checkpoints violated Article 1, Section 14 of the Ohio Constitution and the Fourth Amendment to the United States Constitution. On September 30, 1998, the Motions to Suppress were sustained in the Dayton Municipal Court. The court found that the City of Dayton failed to show that unlicensed drivers posed a threat to public safety as a class, and that the use of checkpoints was an effective method of serving an important governmental interest.

The State of Ohio appealed the Trial Court decisions. On January 14, 2000, the Court of Appeals of Montgomery County, Ohio reversed the decisions of the Trial Court. The court recognized the Fourth Amendment rights at stake but focused its analysis on the government's interest served by the checkpoints and the proper weight that is applicable to that interest. Relying on *Brown v. Texas*, 443 U.S. 47 (1979); *Delaware v. Prouse*, 440 U.S. 648 (1979); and *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990), the Court found that the license checkpoints were constitutional. They were also an effective means for law enforcement to address the serious public danger caused by unlicensed drivers. The petitioners appealed the decision. On May 2, 2001, the Supreme Court of Ohio unanimously affirmed the judgment of the Appellate Court.

ARGUMENT

Reasons for Denying the Writ

The facts and law of the case do not present any special or compelling reasons that would invoke the United States Supreme Court's discretionary jurisdiction over Writs of Certiorari. Plenary review in this case is inappropriate for two reasons. First, driver's license checkpoints are analogous to immigration and sobriety checkpoints and the Ohio Supreme Court decision, in this case, correctly followed the United States Supreme Court jurisprudence. Secondly, the Dayton checkpoint operations were properly administered, in compliance with the precedence set forth in the United States Supreme Court.

I. Driver's license checkpoints are analogous to immigration and sobriety checkpoints and the Ohio Supreme Court decision, in this case, correctly followed the United States Supreme Court jurisprudence.

The Ohio Supreme Court relied on the United States Supreme Court analysis used in *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) and *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990), to examine the constitutionality of driver's license checkpoints. The Ohio Supreme Court stated that,

> . . . the analysis employed by the United States Supreme Court in its cases on sobriety and immigration checkpoints is appropriate for review of driver's license checkpoints. Therefore, we hold that in determining the constitutionality of a driver's license checkpoint, a court must evaluate, on a case-by-case basis, the checkpoint's intrusion on privacy, the state's interest in maintaining the checkpoint, and the extent to which the checkpoint advances the state interest. Applying this three-pronged analysis, we find that Dayton's driver license checkpoints were consistent with the search and seizure provisions of the Ohio and United States Constitutions. *State v. Orr*, 745 N.E.2d 1036 (Ohio 2001)

The Ohio Supreme Court is not alone in their reliance on *Martinez-Fuerte* and *Sitz*. There have been numerous cases which decided the constitutionality of license checkpoints. Federal appellate courts, state supreme and intermediate appellate courts have held that license and

registration checkpoints advance a legitimate governmental interest and are constitutional. See, e.g., *United States v. McFayden*, 865 F.2d 1306, 1311-13 (D.C. Cir. 1989) (describing "regulating vehicular traffic" as a "legitimate state interest," and indicating that "the roadblock program advanced the legitimate interests it was designed to serve," and imposed only a "minimal interference with individual liberty," given that "drivers were not detained at a roadblock once they produced a valid license and registration"); *United States v. Prichard*, 645 F.2d 854 (10th Cir. 1981); *United States v. Tervino*, 60 F.3d 333, 337 (7th Cir. 1995) (rejecting view that motorist approaching a license-and-registration checkpoint must be given "sufficient advance warning so that they may avoid it"), *cert. denied*, 516 U.S. 1061 (1996); *Park v. Forest Service*, 205 F.3d 1034, 1040 (8th Cir. 2000) (rejecting facial challenge to U.S. Forest Service checkpoint program under which officers ask motorist for identification); *United States v. Galindo-Gonzales*, 142 F.3d 1217, 1222 (10th Cir. 1998) (holding that "the brief detention of motorists to inspect license, registration, and insurance information at an established checkpoint comports with the Fourth Amendment"); *Merrett v. Moore*, 58 F.3d 1547, 1553 (11th Cir. 1995) ("the balance of the state's interest in enforcing its license and registration requirements, the extent to which the roadblocks furthered that interest, and the degree of intrusion on individual motorists who experienced only slight delays weigh in favor of the state program," and such a program "therefore . . . d[oes] not violate the Constitution"), *cert. denied*, 519 U.S. 812 (1996); *LaFontaine v. State*, 497 S.E.2d 367, 369 (Ga. 1998) ("Although a roadblock cannot be used as a subterfuge to detain citizens for the

purpose of searching their automobiles, a momentary stop of a traveling citizen to perform the license checks or to check the present fitness of a car or driver for further driving is permissible"), *cert. denied*, 525 U.S. 947 (1998); *Briggs v. State*, 741 So. 2d 986, 989 (Miss. App. 1999) (describing a State's effort to "ensur[e] that drivers of vehicle are properly licensed and that vehicles are properly registered and periodically inspected" as a "legitimate state interest," and concluding that "a roadblock intended principally to detect unlicensed drivers or improperly registered and uninspected vehicles is a constitutionally permissible undertaking"); *State v. Cloukey*, 486 A.2d 143 (Me. 1985); *State v. Grooms*, 483 S.E.2d 445 (N.C. App. 1997).

Simply because individuals are subject to seizure at checkpoints without individual suspicion of criminal activity does not make the practice unconstitutional *per se*. The Ohio Supreme Court and the other Court's reliance and application of the three-pronged analysis are proper. The use of this analysis does not abandon the Fourth Amendment limitations upon government nor does it usurp an individual's Fourth Amendment protections guaranteed by the United States Constitution. The three-pronged analysis is a safeguard, which ensures that law enforcements' use of checkpoints does not unduly encroach upon individual rights.

Checkpoints, of any nature, are still the exception rather than the rule, and are only legal when operated in accordance with well-established law. The United States Supreme Court's message in *Martinez-Fuerte* and *Sitz* was clear and need not be re-examined; checkpoints are constitutional without individualized suspicion of criminal

wrongdoing, only when the three-prong analysis is met. The decisions in *Martinez-Fuerte* and *Sitz* are not in danger of misuse or overuse. The Court has allowed only a few limited exceptions for stops conducted at checkpoints. The Court's reluctance to expand the limited exceptions was most recently evidenced in *Indianapolis v. Edmond*, 531 U.S. 32 (2000). In *Indianapolis*, as in the other checkpoint cases, the Court applied the established three-prong analysis and held that drug interdiction checkpoints, where the primary purpose is to discover ordinary criminal wrongdoing, violate the Fourth Amendment and are invalid. In *Indianapolis* the circumstances clearly showed that the government's significant interest did not outweigh the individual suspicion of criminal wrongdoing, and the significant interest was not served by the use of the checkpoint. This case is an excellent example of how the analysis in *Martinez-Fuerte* and *Sitz*, is preserving Fourth Amendments rights.

Although the United States Supreme Court has never ruled on the constitutionality of a driver's license checkpoint, it has repeatedly suggested that it would uphold properly administered driver's license checkpoints. Therefore, this court has already accepted the idea of constitutionally valid driver's license checkpoints. Driver's license checkpoints are analogous to the immigration and sobriety checkpoints upheld in *Martinez-Fuerte* and *Sitz*, respectively. In the case of the immigration and sobriety checkpoints, law enforcement identified a special need. This special need exists because, the types of activity that the checkpoints detected could not be readily identified by normal law enforcement methods. The special need in *Martinez-Fuerte* can be described as

one of opportunity. Once an illegal alien enters inside the country they cannot be discovered simply by observation, therefore the available opportunity for law enforcement to patrol is limited. This problem made the individual reasonable suspicion criteria impractical. In *Sitz*, the special need was to prevent accidents and injuries caused by intoxicated drivers. Each checkpoint had a primary goal, which did not include detecting evidence of ordinary criminal wrongdoing. The driver license checkpoints have these same characteristics. Absent a checkpoint, law enforcement would not be able to identify unlicensed drivers without a traffic violation or accident. Driver's license checkpoints were conducted only to identify unlicensed drivers. Since all three types of checkpoints are alike in purpose and function, an evaluation to determine whether the idea of drivers license checkpoints are inherently unconstitutional, as argued by the petitioners is not necessary.

What is dispositive of this case is whether the specific operations of the Dayton checkpoint were used to detect or investigate crimes and whether the three-prong analysis stated in *Martinez-Fuerte* and *Sitz* was met.

II. The Dayton checkpoint operations were properly administered, in compliance with the precedence set forth in the United States Supreme Court.

The three-prong test balances the intrusion on privacy against the government's interest and determines whether the interest is achieved by the operations used. This three-prong balancing test, utilized in the sobriety checkpoint and border checkpoint cases is the proper

standard for review to determine the constitutionality of the specific operations conducted by the Dayton Police Department driver's license checkpoints. An application of the three-pronged test establishes that every aspect of the Dayton operation was in compliance with the authority set forth in *Martinez-Fuerte* and *Sitz*.

1. Checkpoints Present a Minimal Intrusion on Privacy

In balancing the government's interest against the level of individual intrusion, the Courts have applied a reasonableness standard. The United States Supreme Court has stated that a driver's license checkpoint is not inherently unreasonable and therefore is not prohibited under the Fourth Amendment. *Delaware v. Prouse, supra.*

The stops conducted during Dayton's driver's license checkpoints were reasonable. The stops caused minimal intrusion or inconvenience to motorists. The stops rarely lasted longer than two minutes. Stops lasting longer than two minutes only occurred when the driver was unable to produce a driver's license or if validity of a license was not verified by the computer. In these situations, reasonable suspicion existed for a longer stop. Only then was the driver detained for approximately ten additional minutes. All the checkpoints were operated on roadways while the vehicle was in operation. Searches of individuals or vehicles were not done. The checkpoint was operated with a method that allowed no officer discretion in selecting the cars that were stopped. The systematic procedures used minimized inconvenience to the drivers. Signs were posted informing drivers of the checkpoint

ahead and police presence was highly visible. Based on the aforementioned procedures, the Dayton Checkpoint operation was reasonable while maintaining a minimal amount of intrusion.

2. Dayton's Interest in Roadway Safety is Maintained Through Driver's License Checkpoints

Unlicensed drivers pose a serious threat to safety. In *Delaware v. Prouse,* the United States Supreme Court recognized this threat. The Court found that,

> [D]rivers without licenses are presumably the less safe drivers whose propensities may well exhibit themselves. Absent some empirical data to the contrary, it must be assumed that finding an unlicensed driver among those who commit traffic violations is a much more likely event than finding an unlicensed driver by choosing randomly from the entire universe of drivers. *Delaware v. Prouse,* 440 U.S. 648, 659 (1979).

The rationale for the presumption that unlicensed drivers are less safe than properly licensed drivers is based upon the fact that an automobile can be a dangerous instrument. To ensure that everyone operating a motor vehicle is competent, extensive requirements are mandated. These requirements involve extensive testing for vehicle operation including, driver qualifications which include knowledge of traffic laws, ability to maneuver an automobile, and physical ability to drive without any appreciable impairment. This extensive testing is done prior to issuing a license. All these areas are

tested due to safety concerns. These concerns are magnified when those who are unable to qualify for a license choose to drive. However, the governmental interest does not stop at the issuance of a license. Roadway safety and the integrity of motor vehicle regulations are advanced through many laws, which govern such areas as road maintenance, vehicle registrations, equipment requirements, and vehicle weights. These laws are necessary to preserve the integrity of all motor vehicle laws, and the safety of our citizens on our roadways. It is clear that the government has a significant interest in distinguishing between licensed and unlicensed drivers. The Courts also acknowledge this significant interest. It has long been held that states have a vital interest in protecting citizens from unqualified or unlicensed drivers. *State v. Cloukey, supra,* at 146. This significant interest is accomplished through many law enforcement methods. However, the enforcement of license requirements is unique because unlicensed drivers are not identified by simple observation. The use of checkpoint operations is the only method available to detect unlicensed drivers while they are operating the vehicle unlawfully.

The only goal of the Dayton checkpoint operations was to identify unlicensed drivers who were unlawfully operating motor vehicles on the public roadway. Removing unlicensed drivers from the road significantly improves the safety of all persons who travel the roadways. Checkpoints allow detection of unlicensed or unqualified drivers before some intervening event, such as when an accident or injury to the public occurs.

3. The Dayton Checkpoints Advanced the Interest Identified by the Dayton Police Department

The problems that unlicensed drivers created for the Dayton Police Department were documented with empirical data, prior to the implementation of the checkpoint operation. The empirical data represented that there were approximately 3.2 million drivers in the state of Ohio. Of the total drivers in Ohio, approximately 800,000 have their driver's license under some type of suspension. In Dayton alone, approximately 30% of the traffic citations issued have been for drivers license violations. From the research it was estimated that approximately 1 in 8 drivers on the streets of Dayton did not possess a valid license. The actual results of the Dayton checkpoint operation confirmed the problems identified by the Dayton Police Department research. During the checkpoint operation 2,110 cars were stopped. Police issued 224 citations and 159 persons were arrested. The checkpoint operation resulted in an arrest rate of over 7.5%. The danger which unlicensed drivers present was established in this case, by both the data collected before and after the checkpoint operation. The data from the actual results of the checkpoint operation demonstrate that the checkpoint operation was an effective means of detecting unlicensed drivers. From these results it is reasonable to believe that the checkpoints impacted the potential for accidents and injuries due to unlicensed drivers on the road.

When the three-pronged analysis is applied to the specific operations of the Dayton checkpoint, reasonable minds could only conclude that Dayton's interest in roadway safety was reasonably advanced through the use of

driver's license checkpoints, while imposing minimal intrusion on the privacy of the motorist. The operation was properly administered and did not violate the Fourth Amendment. This Court has consistently applied the three-prong analysis as the best method to safeguard individual rights and to guard against checkpoint operations that are used for discovery of general criminal wrongdoing. It is evident that the Dayton checkpoint operated with only one goal, to detect unlicensed drivers. The Dayton checkpoint operations were properly administered and the interest in safety on the road and preserving the integrity of driver license laws were achieved.

CONCLUSION

In *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) and *Michigan Dept. of Police v. Sitz*, 496 U.S. 444 (1990) the Supreme Court of the United States upheld the constitutionality of border checkpoints and sobriety checkpoints, respectively. In doing so, they made exceptions to the established rule that a search and seizure conducted without individual suspicion of wrongdoing is unreasonable and violates the Fourth Amendment. The analysis used in *Martinez-Fuerte* and *Sitz* is also appropriate for review of driver's license checkpoint cases. The Supreme Court of Ohio, when determining the constitutionality of a driver's license checkpoints properly recognized and utilized the standard used in border checkpoint and sobriety checkpoint operations.

The City of Dayton's interest in having only those properly licensed operating motor vehicles is significant.

The driver's license checkpoint operation conducted by the City of Dayton was properly operated and did not unreasonably intrude on privacy interests.

Based upon the foregoing, the respondents respectfully request that the Petition for writ of certiorari be denied.

Respectfully submitted,

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